

Tanya E. Moore, SBN 206683
MOORE LAW FIRM, P.C.
300 South First Street, Ste. 342
San Jose, California 95113
Telephone (408) 298-2000
Facsimile (408) 298-6046
E-mail: service@moorelawfirm.com
tanya@moorelawfirm.com

Attorney for Plaintiff
Francisca Moralez

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FRANCISCA MORALEZ,) No.
)
Plaintiff,) COMPLAINT ASSERTING DENIAL OF
) RIGHT OF ACCESS UNDER THE
vs.) AMERICANS WITH DISABILITIES ACT
) FOR INJUNCTIVE RELIEF,
FUTURE FORD OF CONCORD, LLC dba) DECLARATORY RELIEF, DAMAGES,
FUTURE FORD OF CONCORD; GERALD) ATTORNEYS' FEES AND COSTS (ADA)
VALENTE; JARED A. MONEZ;)
)
Defendants.)

I. SUMMARY

1. This is a civil rights action by plaintiff FRANCISCA MORALEZ ("Plaintiff") for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

Future Ford Concord
2285 Diamond Boulevard
Concord, California 94520
(hereafter "the Facility")

2. Plaintiff seeks damages, injunctive and declaratory relief, attorney fees and costs, against FUTURE FORD OF CONCORD, LLC dba FUTURE FORD OF CONCORD; GERALD VALENTE and JARED A. MONEZ (hereinafter collectively referred to as

1 “Defendants”), pursuant to Title III of the Americans with Disabilities Act of 1990 (42 U.S.C.
2 §§ 12101 et seq.) (“ADA”) and related California statutes.

3 **II. JURISDICTION**

4 3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA
5 claims.

6 4. Supplemental jurisdiction for claims brought under parallel California law –
7 arising from the same nucleus of operative facts – is predicated on 28 U.S.C. § 1367.

8 5. Plaintiff’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

9 **III. VENUE**

10 6. All actions complained of herein take place within the jurisdiction of the United
11 States District Court, Northern District of California, and venue is invoked pursuant to 28
12 U.S.C. § 1391(b), (c).

13 **IV. PARTIES**

14 7. Defendants own, operate, and/or lease the Facility, and consist of a person (or
15 persons), firm, and/or corporation.

16 8. Plaintiff is substantially limited in her ability to walk, and must use a wheelchair
17 for mobility. Consequently, Plaintiff is “physically disabled,” as defined by all applicable
18 California and United States laws, and a member of the public whose rights are protected by
19 these laws.

20 **V. FACTS**

21 9. The Facility is open to the public, intended for non-residential use, and its
22 operation affects commerce. The Facility is therefore a public accommodation as defined by
23 applicable state and federal laws.

24 10. Plaintiff lives less than twenty miles from the Facility and visited the Facility on
25 or about February 8, 2023, April 25, 2023, May 2, 2023, May 8, 2023, and May 9, 2023 for
26 vehicle repairs and servicing. During his visit to the Facility, Plaintiff personally encountered
27 barriers (both physical and intangible) that interfered with, if not outright denied, Plaintiff’s
28 ability to use and enjoy the goods, services, privileges and accommodations offered at the

1 Facility. These barriers include, but are not necessarily limited to, the following:

- 2 a) On all occasions, Plaintiff was not able to find a safe path of travel from
3 the accessible parking space to the Facility's entrance or to the service
4 advisor's office. Facility had a lot of moving vehicles as well as
5 vehicles parked very close together in the service area without leaving
6 enough clearance for Plaintiff to maneuver her wheelchair and causing
7 her great difficulty.
- 8 b) On May 8, 2023, and May 9, 2023, Plaintiff noticed that there were
9 other vehicles parked in the designated parking spaces without a proper
10 placards. Plaintiff informed the staff about the vehicles, but no action
11 was taken by the staff.
- 12 c) On February 8, 2023 Plaintiff wanted to visit a store nearby and she was
13 not able to find a safe route from the Facility to the sidewalk and
14 decided not to visit the store as a result.
- 15 d) On February 8, 2023, Plaintiff had difficulty entering the Facility since
16 the automatic doors would not open and she had to raise her arms and
17 wave which caused her great pain and discomfort. The sensors on the
18 doors were positioned above her head as she sat in her wheelchair.
- 19 e) On February 8, 2023, April 25, 2023, and May 2, 2023, Plaintiff was not
20 able to talk to the service advisor privately and comfortably since the
21 office space was limited and not accessible. Due to the limited space
22 Plaintiff was not able to enter which she had to talk to the advisor from
23 the door. It was challenging and painful for Plaintiff to have a
24 conversation with the service advisor over the high counter.
- 25 f) On April 25, 2023, Plaintiff had difficulty opening the service door. She
26 also tried to see where the key drop-off box was to avoid having to go
27 inside the building but it was unreachable to her.
- 28 g) On May 2, 2023, May 8, 2023 and May 9, 2023, Plaintiff went to the

1 service advisor's office where the threshold was high and challenging to
2 maneuver over. Plaintiff's wheelchair jolted causing her pain as she
3 navigated over the threshold.

4 h) On February 8, 2023 and May 9, 2023, Plaintiff had to use the service
5 counter to pay which was high causing difficulty and discomfort to
6 reach over to see the prompt and to sign the invoices.

7 i) During Plaintiff's visit on May 9, 2023, she had to use the restroom and
8 had difficulty operating the door. It caused pain in her leg and wrist.

9 j) Plaintiff was not able to reach the toilet paper or the hook in the
10 restroom as it was too mounted too high. Plaintiff had to relieve herself
11 in her van in a receptacle which was humiliating.

12 k) On May 9, 2023, Plaintiff was not able to find a designated space in the
13 waiting area for her to wait in her wheelchair. She had to stay in the
14 middle of the waiting area which caused problems to other customers
15 and made her feel as an obstacle.

16 l) On May 9, 2023, Plaintiff had difficulty operating the main door as there
17 was a rug in front of the door causing resistance for her to turn around in
18 her wheelchair.

19 11. There may exist other barriers at the Facility which relate to Plaintiff's
20 disabilities, and he will seek to amend this Complaint once such additional barriers are
21 identified as it is Plaintiff's intention to have all barriers which exist at the Facility and relate to
22 his disabilities removed to afford him full and equal access.

23 12. Plaintiff was, and continues to be, deterred from visiting the Facility because
24 Plaintiff knows that the Facility's goods, services, facilities, privileges, advantages, and
25 accommodations were and are unavailable to Plaintiff due to Plaintiff's physical disabilities.
26 Plaintiff enjoys the goods and services offered at the Facility, and will return to the Facility
27 once the barriers are removed.

28 //

1 17. Title III of the ADA holds as a “general rule” that no individual shall be
2 discriminated against on the basis of disability in the full and equal enjoyment (or use) of
3 goods, services, facilities, privileges, and accommodations offered by any person who owns,
4 operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

5 18. Defendants discriminated against Plaintiff by denying Plaintiff “full and equal
6 enjoyment” and use of the goods, services, facilities, privileges and accommodations of the
7 Facility during each visit and each incident of deterrence.

8 Failure to Remove Architectural Barriers in an Existing Facility

9 19. The ADA specifically prohibits failing to remove architectural barriers, which
10 are structural in nature, in existing facilities where such removal is readily achievable. 42
11 U.S.C. § 12182(b)(2)(A)(iv).

12 20. When an entity can demonstrate that removal of a barrier is not readily
13 achievable, a failure to make goods, services, facilities, or accommodations available through
14 alternative methods is also specifically prohibited if these methods are readily achievable. *Id.*
15 § 12182(b)(2)(A)(v).

16 21. Here, Plaintiff alleges that Defendants can easily remove the architectural
17 barriers at the Facility without much difficulty or expense, that the cost of removing the
18 architectural barriers does not exceed the benefits under the particular circumstances, and that
19 Defendants violated the ADA by failing to remove those barriers, when it was readily
20 achievable to do so.

21 22. In the alternative, if it was not “readily achievable” for Defendants to remove
22 the Facility’s barriers, then Defendants violated the ADA by failing to make the required
23 services available through alternative methods, which are readily achievable.

24 Failure to Design and Construct an Accessible Facility

25 23. Plaintiff alleges on information and belief that the Facility was designed and
26 constructed (or both) after January 26, 1993 – independently triggering access requirements
27 under Title III of the ADA.

28 //

24. The ADA also prohibits designing and constructing facilities for first occupancy after January 26, 1993, that aren't readily accessible to, and usable by, individuals with disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

25. Here, Defendants violated the ADA by designing and constructing (or both) the Facility in a manner that was not readily accessible to the physically disabled public – including Plaintiff – when it was structurally practical to do so.¹

Failure to Make an Altered Facility Accessible

26. Plaintiff alleges on information and belief that the Facility was modified after January 26, 1993, independently triggering access requirements under the ADA.

27. The ADA also requires that facilities altered in a manner that affects (or could affect) its usability must be made readily accessible to individuals with disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility's primary function also requires making the paths of travel, bathrooms, telephones, and drinking fountains serving that area accessible to the maximum extent feasible. Id.

28. Here, Defendants altered the Facility in a manner that violated the ADA and was not readily accessible to the physically disabled public – including Plaintiff – to the maximum extent feasible.

Failure to Modify Existing Policies and Procedures

29. The ADA also requires reasonable modifications in policies, practices, or procedures, when necessary to afford such goods, services, facilities, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

30. Here, Defendants violated the ADA by failing to make reasonable modifications in policies, practices, or procedures at the Facility, when these modifications were necessary to afford (and would not fundamentally alter the nature of) these goods, services, facilities, or accommodations.

//

¹ Nothing within this Complaint should be construed as an allegation that Plaintiff is bringing this action as a private attorney general under either state or federal statutes.

Failure to Maintain Accessible Features

31. Defendants additionally violated the ADA by failing to maintain in operable working condition those features of the Facility that are required to be readily accessible to and usable by persons with disabilities.

32. Such failure by Defendants to maintain the Facility in an accessible condition was not an isolated or temporary interruption in service or access due to maintenance or repairs.

33. Plaintiff seeks all relief available under the ADA (i.e., injunctive relief, attorney fees, costs, legal expense) for these aforementioned violations. 42 U.S.C. § 12205.

34. Plaintiff seeks a finding from this Court (i.e., declaratory relief) that Defendants violated the ADA in order to pursue damages under California's Unruh Civil Rights Act.

VII. SECOND CLAIM

Unruh Act

35. Plaintiff re-pleads and incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

36. California Civil Code § 51 states, in part, that: All persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

37. California Civil Code § 51.5 also states, in part that: No business establishment of any kind whatsoever shall discriminate against any person in this state because of the disability of the person.

38. California Civil Code § 51(f) specifically incorporates (by reference) an individual's rights under the ADA into the Unruh Act.

39. Defendants' aforementioned acts and omissions denied the physically disabled public – including Plaintiff – full and equal accommodations, advantages, facilities, privileges and services in a business establishment (because of their physical disability).

40. These acts and omissions (including the ones that violate the ADA) denied, aided or incited a denial, or discriminated against Plaintiff by violating the Unruh Act.

41. Plaintiff was damaged by Defendants' wrongful conduct, and seeks statutory minimum damages of \$4,000 for each offense.

42. Plaintiff also seeks to enjoin Defendants from violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code § 52(a).

VIII. THIRD CLAIM

Denial of Full and Equal Access to Public Facilities

43. Plaintiff re-pleads and incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

44. Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (built with private funds) shall adhere to the provisions of Government Code § 4450.

45. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.

46. Plaintiff alleges the Facility is a public accommodation constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and that the Facility was not exempt under Health and Safety Code § 19956.

47. Defendants' non-compliance with these requirements at the Facility aggrieved (or potentially aggrieved) Plaintiff and other persons with physical disabilities. Accordingly, Plaintiff seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Statutory minimum damages under section 52(a) of the California Civil Code according to proof.
3. Declaratory relief finding that Defendants violated the ADA for the purposes of Unruh Act damages.

1 4. Attorneys' fees, litigation expenses, and costs of suit.²

2 5. Interest at the legal rate from the date of the filing of this action.

3 6. For such other and further relief as the Court deems proper.

4 Dated: 12/6/2023

MOORE LAW FIRM, P.C.

6 /s/ Tanya E. Moore

7 Tanya E. Moore

8 Attorney for Plaintiff

Francisca Moralez

28 _____
² This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

VERIFICATION

I, FRANCISCA MORALEZ, am the plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I verify under penalty of perjury that the foregoing is true and correct.

Dated: 12/6/2023

/s/ Francisca Moralez

Francisca Moralez

I attest that the original signature of the person whose electronic signature is shown above is maintained by me, and that her concurrence in the filing of this document and attribution of her signature was obtained.

/s/ Tanya E. Moore

Tanya E. Moore

Attorney for Plaintiff,

FRANCISCA MORALEZ